
(1981) 05 AHC CK 0014

In the Allahabad High Court

Case No : Civil Misc. Writ No. 6137 and 6299 of 1980

Smt. Tikoli Kunwar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-05-1981

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 4A

Citation : (1981) AWC 600

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.R. Rastogi, J.—These two writ petitions may be taken up together because common questions are involved and the counsel for the Petitioners addressed the same arguments in both of them.

2. In Writ Petition No. 6137 of 1980, the Petitioner is Smt. Tikoli Kunwar. Proceedings under the U.P. Imposition of Ceiling on Land Holdings Act (hereafter "the Act") were started against her by the issue of a notice u/s 10 (2) along with the statement. It was proposed to declare 15 Bighas 14 biswa and 8 biswansis land of her holding as surplus. Her holding was situated in two villages, namely, Changeli and Chathiya. In village Changeli she was tenure-holder of plots nos. 7 and 10. Ram Swarup, who is the Petitioner before this Court in writ petition No. 6299 of 1980, is another tenure-holder of these plots. Smt. Tikoli Kunwar contested the notice and one of the objections taken by her was that plots nos. 7 and 10 aforesaid and the entire land of her holding in village Chathiya were unirrigated and had been wrongly shown as irrigated in the statement. The Prescribed Authority did not accept this contention and by its order dated 31-12-1974, confirmed the notice. In appeal the surplus area was modified to some extent but the finding in regard to the character of the aforesaid land was upheld. Thereafter Smt. Tikoli Kunwar came up to this Court by way of a writ

petition, being Civil Misc. Writ No. 8241 of 1976. That petition was decided by this Court on 26-9-1978. The claim of the Petitioner that the aforesaid land was unirrigated had not been decided in the manner required by Section 4-A of the Act and hence the case was remanded to the appellate Court for decision of this question afresh.

3. After remand, the appellate Court has, on an examination of the relevant Khasras for 1378 to 1380 fasli years, taken the view that to both the plots nos. 7 and 10 aforesaid irrigation facility was available by a tubewell and in some of the land of both the plots two crops had been grown. The petitioner's contention in regard to the other plots has also been similarly examined and ultimately it has been held that irrigated area of plots nos. 7 and 10, a220 and 295 comes to 26 Bighas 8 biswas and 5 biswansis and the remaining brea of 16 Bighas 14 biswas and 1 biswansis is unirrigated and relief has been accordingly given and surplus land has been reduced to 2.92 hectares irrigated land.

4. In the other case Ram Swarup also contested the notice which had been served on him u/s 10 (2) of the Act and claimed that plots nos. 7 and 10 aforesaid were unirrigated. That contention was not accepted by the Prescribed Authority and surplus land was declared. Ram Swarup's appeal having failed, he came up to this Court by way of writ petition, being Civil Misc. Writ Petition No. 785 of 1976. That petition was decided by this Court on 7-4-1978. The petitioner's contention was accepted that the question had not been decided as required by law and further that in the circumstances of the case it was accepted that the Prescribed Authority should have made a local inspection, and then decide this objection of the Petitioner regarding plots nos. 7 and 10. After remand the Prescribed Authority made a local inspection and found that in plot No. 1 only 5 Bighas 14 biswas and 10 biswansis and in plot No. 10, 8 Bighas 5 biswas land is unirrigated while the remaining is irrigated. It appears that the Petitioner filed certain objections to the inspection report of the Prescribed Authority. The Prescribed Authority, however, on the basis of the inspection report gave some relief to the tenure-holder Ram Swarup and determined 4.21 hectares in terms of irrigated land as surplus. The inspection report of the Prescribed Authority in Ram Swarup's case was not available to the appellate Court while deciding the appeal of Smt. Tikoli Kunwar. It would have been better if these cases were taken up together and the appeals were heard by the same Court, but there is nothing on the record to suggest that the parties desired that these cases should be consolidated and unless that was done, the evidence available on the record of one case could not have been read in the other case.

5. As for the case of Ram Swarup tenureholder, of course, the case was remanded by this Court to the Prescribed Authority. In compliance with the directions given by this Court, the Prescribed Authority made a local inspection and gave its report. Surprisingly enough Ram Swarup Petitioner filed an objection to that report. In my opinion such an objection was not maintainable. It is another thing that if in the report of a Presiding Officer of a Court some thing had

been pointed out on the spot and by some over-sight it had not found mention in the report, the attention can be drawn to it, but that is absolutely different from raising an objection to the observations of the Court.

6. In this behalf, it would be useful to refer to the relevant provision. As for the power of the Court to inspect, provision has been made in Order 18 Rule 18 of the Code of Criminal Procedure. It reads:

The Court may, at any stage of a suit, inspect any property or thing concerning which any question may arise and where the Court inspects any property or thing, it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form part of the record of the suit.

Order 18 provides for hearing of the suit and examination of witnesses. Rule 18, as noted above, enables the Court to inspect any property or thing and the object is to enable it to understand the questions that are being raised and appreciate the evidence. It is correct that the judgment can not be passed solely on the basis of such personal local inspection. The memorandum of inspection forms a part of the record of the suit and there is certainly no question of any party filing any objection to such memorandum. The power of the Court to inspect is not to be confused or equated with the report of a Commissioner. Order 26 of the CPC provides for Commissions. Commissions may be issued to examine witnesses, for local investigation and to examine accounts. For local investigation it is under Rule 9 of this Order that if the Court deems a local investigation to be requisite or proper to elucidate any matter in dispute or for ascertaining the market value of any property or the amount of any mesne profits or damages, the Court may issue a commission to such person as it thinks fit. Rule 10 provides for the procedure which is to be followed by the Commissioner and sub-rule (2) says that the report of the Commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record, but the Court or with the permission of the Court, any of the parties to the suit may examine the matters reported to him or mentioned in his report. Sub-rule (3) empowers the Court to direct such further enquiry to be made as it shall think fit if for any reasons it is dissatisfied with the proceedings of the Commissioner. In the case of a local inspection by the Court itself, no such occasion can arise. And the question also is that if an objection is permitted to be filed against the memorandum of local inspection of the Court, then who is to decide it. Certainly, it cannot be expected of that Court itself to decide it, If it is taken that the appellate Court is to decide it, then it can do so only if itself visits the spot. Against the appellate court's memorandum of his petition as well an objection may be filed and thus there can be no end to this process. I do not think that such a situation can be permitted to arise.

7. learned Counsel for the Petitioners drew my attention to certain decisions in support of his contention. In *Ramdeo Vs. D.D.C. and Others*, the view taken was that where a local inspection was made after hearing of arguments in the case,

the Petitioner was entitled to a fresh hearing on the material obtained after such inspection. The learned Counsel wanted to infer from this proposition that if after local inspection fresh hearing is permissible, it can only be for the purposes of challenging the material obtained after inspection. I do not find any warrant for this inference from this decision. Right of hearing is entirely different from a right to file an objection. Certainly, if after the close of arguments in a case a Court makes a local inspection, the party should be given a fresh opportunity of hearing on the material obtained by the Court after inspection. That will be with a view to enlighten the Court on the evidence given in the case in the light of objections to the observations made by the Court after local inspection. This decision, therefore, does not help the Petitioners.

8. The next case is a decision of the Assam High Court in *Manindra Kumar Rai v. Pares Chandra Ray*, AIR 1971 GH & NA 127, but in my opinion instead of supporting the Petitioners, it lends support to the observation made by me above. In that case a Munsif, purporting to exercise power under Order 18 Rule 18 of the Code of Criminal Procedure, got measurement of the land done and made a survey report. In the opinion of the Munsif since the measurement was done in presence of the Plaintiff and his lawyer, he could not raise any objection to the measurement. It was observed by their Lordships that under Order 18 Rule 18 it was not possible for the Munsif to make a local inspection in the manner done in the suit. Under that Rule the Court at any stage of a suit may inspect any property or thing concerning which a question may arise. It is not permissible for a Court to conduct an enquiry in order to furnish evidence in the suit for proper decision of the issues raised in the suit. It was held that under Rule 18 aforesaid the Court in its discretion uses this power in a proper case and when the Court inspects the property it makes a memorandum of inspection for the purposes of the record. It was observed : There can be no cross-examination of the Court with regard to such a report and the Court does not become a witness of the proceedings by making this inspection. On the other hand, a Commissioner under Order 26 Rule 9 has to offer himself as a witness, if required to satisfy the Court regarding, the correctness or accuracy of his report or opinion about the manner in which he has conducted the proceedings." It was further held that by the impugned order the Munsif, although purported to exercise his power under Order 18 Rule 18 of the Code of Criminal Procedure, in fact made a report and at the same time denied opportunity to the Plaintiff to question the same or to furnish other appropriate evidence. In this context the view taken was :

After having performed the function of the Commissioner under Order 26 Rule 9, as it appears to be, the learned Munsif disqualified himself from further continuing adjudication of the suit.

9. In the present case such a situation did not obtain. The Prescribed Authority made the local inspection under Order 18 Rule 18 of the Code of Criminal Procedure and made a memorandum of inspection for the purposes of the

record. Strangely enough a copy of that memorandum has not been filed by the Petitioners though they have taken particular care to file a copy of the objection. In my opinion there could have been no occasion for filing any such objection because while making an spot inspection under Order 18 Rule 18 of the Code of Criminal Procedure the Court does not become a witness to the proceedings.

10. Therefore, in so far as Smt. Tikoli Kunwar's case is concerned, the report of the Prescribed Authority's local inspection was not before the appellate Court and in so far as Ram Swamp's case is concerned an objection to the report could not have been maintained and apart from that the appellate Court has decided the matter mainly on the basis of relevant Khasras and in doing so has not come to a finding which is in any way contrary to the report of local inspection of the Prescribed Authority.

11. Another contention made on behalf of the Petitioners was that the relevant entries of the Khasras for the aforesaid three years are incorrect and the appellate Court erred in relying on the same. There is no merit in this contention either because Khasra entries are presumed to be correct. It is, of course, a rebuttable presumption and if any party feels aggrieved against any particular entry, it has remedy for that, but the forum of the ceiling authorities is not a proper forum for that purpose. In the proceedings under the Act, therefore, the ceiling authorities could not have gone into the question as to whether or not the disputed entries were correct or not.

12. It would thus appear that there is absolutely no merit in these writ petitions and they are liable to be dismissed. Both the writ petitions are hence dismissed. The stay orders dated 17-7-1980 passed in these two writ petitions are vacated. There will be no order as to costs.